

No. _____
In the
Texas Court of Criminal Appeals
At Austin
—◆—

FILED
COURT OF CRIMINAL APPEALS
11/28/2018
DEANA WILLIAMSON, CLERK

No. 14-17-00005-CR
In the Court of Appeals for the
Fourteenth District of Texas
At Houston
—◆—

No. 2112570
In County Criminal Court at Law No. 8
Of Harris County, Texas
—◆—

LESLEY DIAMOND
Appellant
V.
THE STATE OF TEXAS
Appellee
—◆—

STATE'S FIRST MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR DISCRETIONARY REVIEW
—◆—

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

THE STATE OF TEXAS, pursuant to TEX. R. APP. P. 10.1, 10.5(b) and 68.2(c), moves for an extension of time within which to file a Petition for Discretionary Review. In support of its motion, the State submits the following:

1. In 2014, appellant was convicted of driving while intoxicated and was sentenced to 5 days in jail and a \$2,000 fine. (Supp. CR – 24) On September 19, 2016, appellant filed an application for writ of habeas corpus requesting that the trial court set aside her judgment of

conviction. (Supp. CR – 3-16) The trial court denied relief on December 5, 2016, and appellant appealed the trial court’s order. (CR – 49-51)

2. On May 3, 2018, the Fourteenth Court of Appeals affirmed the trial court’s denial of appellant’s writ application. On May 21, 2018, the trial court entered a judgment nunc pro tunc which changed appellant’s degree of offense from a Class B misdemeanor to a Class A misdemeanor. (Supp.III CR – 4-10, 16, 22-23)
3. On May 29, 2018, appellant filed a motion for rehearing. The State submitted a response to appellant’s motion for rehearing on June 14, 2018.
4. On September 11, 2018, the Fourteenth Court’s original opinion was withdrawn and appellant’s motion for rehearing was granted. On the same date, in a majority opinion, the Fourteenth Court reversed the trial court’s denial of appellant’s writ application, granted habeas relief, set aside the nunc pro tunc judgment of conviction, and remanded the case for further proceedings.
5. On September 11, 2018, the State filed a motion for rehearing. Appellant filed a response to the State’s motion for rehearing on September 26, 2018.
6. On October 23, 2018, the Fourteenth Court’s September 11 opinion was withdrawn and the State’s motion for rehearing was denied. On the same date, in a substitute majority opinion, the Fourteenth Court again reversed the trial court’s denial of appellant’s writ application, granted habeas relief, set aside the nunc pro tunc judgment of conviction, and remanded the case for further proceedings.
7. The State’s Petition for Discretionary Review is due on November 26, 2018.
8. The State seeks a thirty-day extension to file its Petition for Discretionary Review.

9. The following facts are relied upon to show good cause for the requested extension:
- i. This is the State's first request for an extension.
 - ii. The undersigned attorney was assigned this appeal on November 1, 2018.
 - iii. The undersigned attorney was not involved with this appeal while previous appellate prosecutors were assigned to it. Therefore, since being assigned to this case, the undersigned attorney has had to become familiar with the appellate record, briefs, and opinions issued, in addition to the legal issues addressed therein, in order to complete the State's Petition for Discretionary Review.
 - iv. The undersigned attorney has also been involved in the following appellate projects while she has been assigned to this appeal:
 - a. Alfredo Campos v. State of Texas
No. 01-17-00828-CR
No. 01-17-00829-CR
Brief submitted: November 5, 2018
 - b. Ex parte Luis Abrego
No. 01-18-00263-CR
No. 01-18-00371-CR
Motion to Dismiss submitted: November 15, 2018
 - c. Manuel Gutierrez v. State of Texas
No. 01-17-00734-CR
Brief due: December 12, 2018
 - d. Manuel Espino-Cruz v. State of Texas
No. 14-18-00504-CR
Brief due: December 19, 2018

v. The undersigned attorney will be out of the office on November 22-25 for the Thanksgiving holiday.

10. This motion for extension is not made for purposes of delay, but that the issues in this case can be addressed completely and properly in briefing to this Court.

WHEREFORE, the State prays that this Court will grant a thirty-day extension of time, from the due date of November 26, 2018, for the undersigned attorney to complete and file the State's Petition for Discretionary Review.

Respectfully submitted,

/s/ Patricia McLean

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument will be sent by e-filing to:

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/s/ Patricia McLean
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Date: November 21, 2018